

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LOUISE ARMIJO,

Plaintiff,

v.

YAKIMA HMA, LLC, et al.,

Defendants.

NO: 11-CV-3114-TOR

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS AND
GRANTING LEAVE TO AMEND

BEFORE THE COURT are Defendant Yakima HMA, LLC's Motion to Dismiss (ECF No. 29) and Plaintiff's Motion for Leave to Amend Complaint (ECF No. 33). These matters were heard without oral argument on July 3, 2012. The Court has reviewed the motions, the responses, the replies, and is fully informed.

PROCEDURAL HISTORY

On April 11, 2012, the court entered an order dismissing with prejudice claims in Plaintiff's First Amended Complaint for wrongful discharge in violation of public policy, failure to accommodate, intentional infliction of emotional distress (outrage), negligent infliction of emotional distress, negligent hiring,

1 training, managing and supervision, and negligent retention. ECF No. 27. The
2 court also dismissed Plaintiff's claims for defamation, libel and slander, invasion
3 of privacy, failure to pay overtime, and breach of contract with leave to amend.
4 ECF No. 27.

5 Plaintiff filed a Second Amended Complaint on April 25, 2012, in which she
6 re-pled her cause of action for invasion of privacy and also added a claim for
7 conversion and civil theft. ECF No. 28. Defendant Yakima HMA, LLC, moved to
8 dismiss the Second Amended Complaint on May 14, 2012, on the grounds that
9 Plaintiff had added claims without Defendant's consent or prior leave of the court
10 and had listed defendants who had been previously dismissed. ECF No. 29.
11 Plaintiff filed a memorandum opposing dismissal and also filed a motion in the
12 alternative for leave to amend her complaint to include claims for invasion of
13 privacy and conversion on June 4, 2012. ECF Nos. 32, 33.

14 DISCUSSION

15 A. Invasion of Privacy Claims

16 Plaintiff's Second Amended Complaint includes renewed allegations that
17 Defendant violated her right to privacy by reading and/or disclosing portions of her
18 private diary. Some of these allegations reference violations of RCW 42.56.050,
19 while others appear to reference the common law invasion of privacy torts of
20 intrusion upon seclusion and public disclosure of private facts. Defendant has

1 moved to dismiss Plaintiff's invasion of privacy claims on the grounds that (1) they
2 were added without Defendant's written consent or leave of the court; and (2)
3 Plaintiff has failed to state a claim for a violation of RCW 42.56.050.

4 As an initial matter, the court finds that Plaintiff's amendment of the
5 complaint with respect to her invasion of privacy claims was proper. In its April
6 11 order, the court ruled that Plaintiff had failed to state a claim for invasion of
7 privacy by false light. ECF No. 27 at 18-20. The court did, however, grant
8 Plaintiff leave to amend her complaint to state a different invasion of privacy
9 claim. ECF No. 27 at 20 ("The Court finds the false light invasion of privacy
10 cause of action insufficient, but that another amendment might not be futile to
11 stating a cause of action."). Accordingly, the court need only decide whether
12 Plaintiff's Second Amended Complaint states a claim for invasion of privacy.

13 1. RCW 42.56.050

14 Revised Code of Washington 42.56.050 is the so-called "privacy exemption"
15 to Washington's Public Records Act ("PRA"). This statute prohibits state and
16 local agencies from disclosing information about an individual that "(1) Would be
17 highly offensive to a reasonable person, and (2) is not of legitimate concern to the
18 public." RCW 42.56.050. The purpose of this statute is to exempt from
19 compulsory disclosure under the PRA matters that are "highly offensive and
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1 lacking in personal interest.” *Corey v. Pierce Cnty.*, 154 Wash. App. 752, 766, 225
2 P.3d 367, 375 (2010).

3 Plaintiff has not alleged that Defendant disclosed the private information at
4 issue pursuant to a Public Records Act request. Nor has Plaintiff alleged that
5 Defendant is a state or local agency. Accordingly, Plaintiff’s Second Amended
6 Complaint fails to state a claim for a violation of RCW 42.56.050. The court finds
7 that any further amendment as to this cause of action would be futile.

8 2. Intrusion Upon Seclusion

9 Washington recognizes a common law cause of action for invasion of
10 privacy by intrusion upon seclusion. To prevail on an intrusion on seclusion claim,
11 a plaintiff must prove that the defendant (1) deliberately intruded; (2) into the
12 plaintiff’s solitude, seclusion, or private affairs; (3) in a manner that would be
13 highly offensive to a reasonable person. *Fisher v. State ex rel. Dep’t of Health*,
14 125 Wash. App. 869, 879, 106 P.3d 836, 840 (2005); *Restatement (Second) of*
15 *Torts* § 652B (1977).

16 Plaintiff’s Second Amended Complaint alleges that Defendant’s agents or
17 employees deliberately read portions of her personal diary which contained details
18 about Plaintiff’s private marital relations. *See* Pl.’s Second Am. Compl., ECF No.
19 33-2, at ¶¶ 204-06, 223-27, 230. The court finds that these allegations are
20

1 sufficient to state a claim for intrusion upon seclusion. Accordingly, Defendant's
2 motion to dismiss this claim is denied.

3 3. Public Disclosure of Private Facts

4 Washington also recognizes a common law cause of action for invasion of
5 privacy by public disclosure of private facts. To prevail on a public disclosure of
6 private facts claim, a plaintiff must prove that the defendant (1) intentionally
7 disclosed private facts; (2) that were not of legitimate concern to the public; (3)
8 which disclosure would be highly offensive to a reasonable person. *See Adams v.*
9 *King Cnty.*, 164 Wash.2d 640, 661, 192 P.3d 891, 902 (2008); *Restatement*
10 (*Second*) of *Torts* § 652D (1977). This cause of action is distinguished from the
11 tort of intrusion upon seclusion in that “publicity is an essential element [of] an
12 action based upon the defendant’s public disclosure of private facts.” David K.
13 DeWolf & Keller W. Allen, 16A *Washington Practice Series* § 20.5 (3d ed.).

14 Plaintiff’s Second Amended Complaint alleges that Defendant intentionally
15 disclosed highly private marital-related information contained in her personal diary
16 to members of its staff and to other members of the public by placing the diary “on
17 a box with the pages open.” *See* Pl.’s Second Am. Compl., ECF No. 33-2, at ¶¶
18 213-16, 219-22, 225-27, 230. The court finds that these allegations are sufficient
19 to state a claim for public disclosure of private facts. Accordingly, Defendant’s
20 motion to dismiss this claim is denied.

1 **B. Conversion and Civil Theft Claim**

2 Plaintiff's Second Amended Complaint pleads a new cause of action for
3 conversion under Washington common law. This claim was not raised in
4 Plaintiff's First Amended Complaint. Defendants seek dismissal of this claim on
5 the ground that it was filed without Defendant's written permission or prior leave
6 of the court in violation of Federal Rule of Civil Procedure 15(a)(2).

7 Unlike Plaintiff's claims for invasion of privacy, her conversion claim does
8 not fall within the scope of the court's April 11 order granting Plaintiff leave to
9 amend. Accordingly, the court must consider whether leave to amend would be
10 appropriate under Rule 15(a)(2). In making this determination, the court must
11 consider five factors: bad faith, undue delay, prejudice to the opposing party,
12 futility of amendment, and whether the plaintiff previously amended the complaint.
13 *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). The court
14 has substantial discretion in deciding whether to allow an amendment. *Plumeau v.*
15 *Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 439 (1997). "The court should
16 freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

17 Here, there is no indication that Plaintiff acted in bad faith. Although
18 Plaintiff failed to provide a compelling reason for failing to plead her conversion
19 claim earlier, there is nothing to suggest that her delay was deliberate or designed
20 to gain a tactical advantage. However, the court finds that Plaintiff could have—

1 indeed, should have—pled this claim in her original Complaint or her First
2 Amended Complaint. As Defendant correctly notes, Plaintiff was aware of the
3 factual basis for this claim from the beginning. Accordingly, the undue delay and
4 prior amendment factors weigh against granting leave to amend.

5 On the other hand, Plaintiff's delay in filing her conversion claim has not
6 prejudiced Defendant. In light of the relatively straightforward nature of the claim,
7 allowing Plaintiff to proceed with this cause of action will not substantially delay
8 discovery or unduly complicate Defendant's legal strategy. While some additional
9 discovery may be required, there is no reason why it cannot be completed
10 expeditiously prior to the January 2, 2013 discovery cutoff.

11 Finally, the court finds that an amendment to include a conversion claim
12 would not be futile. For purposes of the futility analysis, the relevant question is
13 whether Plaintiff's Second Amended Complaint states a facially plausible cause of
14 action for conversion. *See Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 215 (9th
15 Cir. 1988) (noting that the “proper test to be applied when determining the legal
16 sufficiency of a proposed amendment is identical to the one used when considering
17 the sufficiency of a pleading challenged under Rule 12(b)(6)” of the Federal Rules
18 of Civil Procedure); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a
19 motion to dismiss, a complaint must contain sufficient factual matter, accepted as
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1 true, to state a claim to relief that is plausible on its face.”) (internal quotation and
2 citation omitted).

3 To prevail on a claim for conversion, a plaintiff must prove the following
4 elements: (1) that the defendant willfully interfered with a chattel; (2) that the
5 defendant acted without lawful justification; (3) that the plaintiff was entitled to
6 possession of the chattel; and (4) that the plaintiff was deprived of such possession.

7 *Alhadeff v. Meridian on Bainbridge Island, LLC*, 167 Wash.2d 601, 619, 220 P.3d
8 1214, 1223 (2009). A willful failure to return personal property belonging to
9 another constitutes conversion. *Demelash v. Ross Stores, Inc.*, 105 Wash. App.
10 508, 522, 20 P.3d 447, 455 (2001).

11 Plaintiff’s Second Amended Complaint alleges that she purchased a filing
12 cabinet with her own money and for her own personal use, and that Defendant
13 failed to return the filing cabinet to her after she was terminated. *See* Pl.’s Second
14 Am. Compl., ECF No. 33-2, at ¶¶ 235, 238-40. Plaintiff also alleges that
15 Defendant failed to return certain unspecified personal items that Plaintiff stored in
16 her filing cabinet. *See* Pl.’s Second Am. Compl., ECF No. 33-2, at ¶¶ 237-39. Of
17 course, Plaintiff must identify these personal items. The court finds that these
18 allegations are sufficient to state a claim for conversion.

19 On balance, the court finds that Plaintiff’s delay in pursuing her conversion
20 claim is outweighed by the absence of prejudice to Defendant and the fact that

1 Plaintiff has pled a facially valid claim. Accordingly, Plaintiff's motion for leave
2 to amend is granted, and Defendant's motion to strike the conversion claim is
3 denied.

4 **C. Claims Against Previously-Dismissed Defendants**

5 In its April 11 order, the court dismissed Plaintiff's claims against all
6 Defendants who had not been served within 120 days of service of the Complaint.
7 The court noted that Plaintiff served Defendant Hospital Management Services of
8 Florida, Inc., a Washington Corporation d/b/a Toppenish Community Hospital, on
9 November 22, 2011, and Defendant Health Management Associates, Inc., on
10 November 30, 2011. ECF No. 27 at 24. Of course, Defendant Yakima HMA,
11 LLC, was served with Plaintiff's original Complaint on November 22, 2011 (*see*
12 ECF No. 3) and with Plaintiff's First Amended Complaint on January 6, 2012 (*see*
13 ECF No. 6). All other Defendants were dismissed.

14 Plaintiff's Second Amended Complaint lists Defendants Yakima HMA, Inc.,
15 and John Does 1-50 in its caption. Both of these Defendants have been previously
16 dismissed, and Plaintiff has not sought leave to state new claims against them.
17 Accordingly, Defendant's motion to dismiss is granted with respect to these
18 parties. Plaintiff is directed to remove these Defendants, as well as any other
19 previously-dismissed Defendants, from the caption of her Second Amended
20 Complaint and all subsequent pleadings.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant Yakima HMA, LLC's Motion to Dismiss (ECF No. 29) is

GRANTED in part and **DENIED** in part.

2. Plaintiff's Motion for Leave to Amend Complaint (ECF No. 33) is

GRANTED.

3. Plaintiff shall remove Yakima HMA, Inc., and John Does 1-50, as well as any other previously-dismissed Defendants, from her Second Amended Complaint. Plaintiff shall file a “Revised Second Amended Complaint” reflecting this change within **seven (7) days** of the entry of this order.

The District Court Executive is hereby directed to enter this Order and

provide copies to counsel.

DATED this 3rd day of July, 2012.

s/ Thomas O. Rice

THOMAS O. RICE
United States District Judge